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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,007	04/14/2004	Andrew S. Wishart	205327-9020 5523	
1131	7590 01/26/2005		EXAM	INER
MICHAEL BEST & FRIEDRICH LLC			GIBSON, ROBERT W	
	401 NORTH MICHIGAN AVENUE SUITE 1900		ART UNIT	PAPER NUMBER
CHICAGO,	IL 60611-4212		3634	
			DATE MAILED: 01/26/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
•	10/824,007	WISHART ET AL			
Office Action Summary	Examiner	Art Unit			
	Robert W. Gibson, Jr.	3634			
The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1. after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a rep - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statut, Any reply received by the Office later than three months after the mailine earned patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be tin ly within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
Status					
1) Responsive to communication(s) filed on					
· ·	—· s action is non-final.				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4) ☐ Claim(s) 4-107 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) ☐ Claim(s) 67-86 and 97-107 is/are allowed. 6) ☐ Claim(s) 4-66,87-90 and 93-96 is/are rejected 7) ☐ Claim(s) 91 and 92 is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or	wn from consideration.				
Application Papers					
9) The specification is objected to by the Examine	er.				
10)⊠ The drawing(s) filed on 14 April 2004 is/are: a	☑ The drawing(s) filed on <u>14 April 2004</u> is/are: a)☑ accepted or b)☐ objected to by the Examiner.				
Applicant may not request that any objection to the	drawing(s) be held in abeyance. See	∍ 37 CFR 1.85(a).			
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.				
	Naminor. Note the attached Office	Addition 101111 1 10-102.			
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Burea * See the attached detailed Office action for a list 	ts have been received. Is have been received in Application In the second second in the second sec	on No ed in this National Stage			
Attachment(s)					
1) Notice of References Cited (PTO-892)	4) Interview Summary				
 Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 4/14/04, 10/15/04. 	Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ate latent Application (PTO-152)			

- 1. Claims 4-66 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-64 of U.S. Patent No. 6,739,463. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences are considered to be modifications that would have been obvious to one with ordinary skill in this art.
- 2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or

patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 4. Claims 87-90, 93-96 are rejected under 35
 U.S.C. 102(b) as being clearly anticipated by Yeh
 6,029,833.

Note, front and rear uprights (11), front-rear stretchers (12), first and second laterally extending beams (21), merchandise display support element (display panel), and upright (22).

4. Claim 95 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 95 appears to be inaccurate. In that regard, it is not understood how the "upright" can be supported "solely" by the rack uprights, especially when "upright" is "coupling the laterally extending beams."

- 6. Claims 91-92 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 7. Claims 67-86 and 97-107 are allowable.
- 8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Gibson, Jr. whose telephone number is 703-308-2168. The examiner can normally be reached on M-F 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. more information about the PAIR system, see http://pairdirect.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

> Robert W. Gibson, Jr. Primary Examiner

Art Unit 3634